

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ISON CONTANT,

Plaintiff :

vs. :

CRAIG A. LOWE; SGT. WINCOVICH;
SGT. DERRICK;
ROBERT MCLAUGHLIN; LT. KUMURES;
LT. LAMBIGNE; OFFICER JOHN DOE,

Defendants :

JUDGE: CALDWELL

NO. 1: CV-08-1403

DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

Defendants, Craig A. Lowe; Sgt. Wincovich; Sgt. Derrick; Robert McLaughlin; Lt. Kumures; Lt. Lambigne and Officer John Doe, through their attorneys, Kreder Brooks Hailstone, LLP, make the following Answer to Plaintiff's Complaint:

FIRST DEFENSE

1. It is admitted that Plaintiff is an inmate at the Pike County Correctional Facility.

2. It is admitted that Craig A. Lowe is the Warden of the Pike County Correctional Facility at all times material hereto. It is also admitted that the remaining Defendants are present or former employees of the Pike County Correctional Facility.

3. It is denied that any of the employees, other than Warden Craig A. Lowe, have any responsibility or input into dietary issues.

4. The averments of the Statement of Claim are denied.

5. It is denied that Plaintiff sustained any remedies.

6. It is denied that Plaintiff pursued his administrative remedies at the Pike County Correctional Facility. In fact, the Complaint admits that he did not.

7. It is denied that the Plaintiff is entitled to any claim of relief, an injunctive compensatory or punitive damages.

AFFIRMATIVE DEFENSES - SECOND DEFENSE

8. Plaintiff's Complaint failed to set forth a cause of action upon which relief can be granted.

AFFIRMATIVE DEFENSES - THIRD DEFENSE

9. Plaintiff's claim against the Defendants are barred by qualified immunity.

AFFIRMATIVE DEFENSES - FOURTH DEFENSE

10. Defendants, Wincovich, Derrick, McLaughlin, Kumures, Lambigne and Doe had no involvement with the setting of policy with regard to religiously compliant diet at the Pike County Correctional Facility.

AFFIRMATIVE DEFENSES - FIFTH DEFENSE

11. Plaintiff did not pursue his administrative remedies at the Pike County Correctional Facility and this case should be barred under the terms of the Prison Litigation Reform Act.

AFFIRMATIVE DEFENSES - SIXTH DEFENSE

12. Plaintiff was committed to the Pike County Correctional Facility on March 7, 2008.

13. On March 12, 2008, Plaintiff requested, for the first time, a religiously compliant diet and was placed on a kosher diet.

14. On June 2, 2008, the Pike County Correctional Facility instituted a “common fare” diet which is universally compliant with all religious restrictions. Plaintiff was placed on the “common fare” diet on June 2, 2008.

15. On June 10, 2008, in accordance with the policy of the Pike County Correctional Facility, Plaintiff was removed from the “common fare” diet because the prison records indicated that he was purchasing foods which were not religiously compliant from the Commissary.

16. The policy states that when such purchases occur, an inmate is removed from the “common fare” diet and not placed back on the diet until the expiration of ninety (90) days during which he or she must not make any more purchases of non-compliant items at the Commissary.

17. On October 2, 2008, Plaintiff submitted a request to receive the “common fare” diet. The request was granted because ninety (90) days had elapsed since his purchase of non-compliant food at the Commissary.

18. There are fifty-four (54) items at the Commissary consisting of compliant foods.

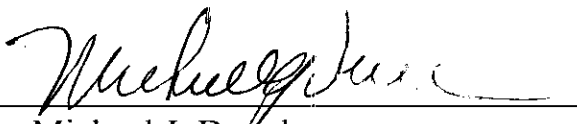
19. Since October 8, 2008, Plaintiff has been served the religiously compliant “common fare” diet.

Wherefore, it is respectfully requested that Plaintiff’s Complaint be dismissed.

Respectfully submitted,

KREDER BROOKS HAILSTONE LLP

220 Penn Avenue, Suite 200
Scranton, PA 18503
(570) 346-7922

BY: 
Michael J. Donohue
Attorney I.D. #25906
Attorneys for Defendants

CERTIFICATE OF SERVICE

AND NOW, this 2nd day of January , 2009, Michael J. Donohue, a member of the firm of Kreder Brooks Hailstone, LLP, hereby certify that I have this day served the within DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT by first class mail to the party of record as follows:

ISON CONTANT
08-03028
PIKE COUNTY CORRECTIONAL FACILITY
175 PIKE COUNTY BLVD
LORDS VALLEY PA 18428

A handwritten signature in black ink, appearing to read "Michael J. Donohue", is written over a horizontal line.

Michael J. Donohue
Attorney I..D. #25906
Attorneys for Defendants